

COMSCINST 5720.8B	COG CODE N00P	DATE 10 FEB 1994
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DEPARTMENT OF THE NAVY  
COMMANDER MILITARY SEALIFT COMMAND  
WASHINGTON NAVY YARD BLDG 210  
901 M STREET SE  
WASHINGTON DC 20398-5540

COMSCINST 5720.8B  
N00P  
10 February 1994

## COMSC INSTRUCTION 5720.8B

Subj: PUBLIC ACCESS TO MSC RECORDS

Ref: (a) 5 U.S.C. 552 (1988), as amended by the Freedom of Information Reform Act of 1986  
(b) SECNAVINST 5720.42E

1. Purpose. To provide policy and assign responsibilities for implementing the Freedom of Information Act (FOIA) within the Military Sealift Command (MSC). This instruction is a complete revision and should be read in its entirety.

2. Cancellation. COMSCINST 5720.8A.

3. Applicability. This instruction governs disclosure of agency records to any person. It is effective immediately and is mandatory for use by all MSC activities.

4. Policy. The MSC policy is to provide information to any member of the public who is seeking documents under reference (a). Information will be disclosed unless it is specifically protected by one or more of the FOIA exemptions.

a. The address for all FOIA matters is Commander, Military Sealift Command, Attn: FOIA, Washington Navy Yard Bldg 210, 901 M Street SE, Washington DC 20398-5540. There are no special provisions for hand delivered requests.

b. A request will receive prompt attention. Requests will be processed in the order in which they are received. Under very rare circumstances, expedited action may take place on a case-by-case basis. This may take place after documentation and justification by the requester.

5. Definitions

a. FOIA Request. A written request for records which may be made by any person.

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b. Person. For FOIA purposes, an individual, partnership, corporation or association, regardless of nationality, are considered persons.

c. Record. Data compilation and other tangible documents in existence, possession and control of MSC at the time of search.

d. FOIA Coordinator. The principal point of contact for all FOIA matters.

e. Release Authority. Responds to requests for documents for which no FOIA exemption applies.

f. Initial Denial Authority (IDA). Only COMSC (N00) has the authority to withhold all, or portions of records under FOIA exemptions; grant, or deny requests for reduction, or waiver of fees; grant formal 10-day time extensions.

g. Electronic Data. Records and information which are created, stored and retrieved by electronic means. In some instances, this may be computer software.

h. Shoreside Activity. For purposes of this instruction, any activity which is subordinate to MSC Headquarters (e.g., Area and Subarea Commands, MSC offices and liaison officers).

## 6. Responsibility and Authority

a. Director, Legislative and Public Affairs. Plans and directs the MSC FOIA/PA Program with the primary function of assuring the public has factual information concerning the command, its mission, policies, people and relationship with the commercial industry.

b. FOIA Coordinator. Administers a FOIA Program implemented under reference (b) and this instruction. The Command FOIA Coordinator is COMSC (FOIA).

c. Office of Counsel (N2). Provides legal advice, when asked by the FOIA Coordinator, COMSC or his designated representative.

d. Security Officer (N15). Reviews all requested classified information and technical data; and ensures identification of current classification, critical unclassified technology and technical and operational functions of MSC, when asked.

e. Comptroller (N8). Processes all FOIA payments received by FOIA Coordinators and institutes procedures for delinquent payees under implementation of reference (b).

f. Director/Special Assistant. Conducts a thorough search for all responsive records in the file systems of that directorate. Prepares the text for proposed responses. Ensures mandatory FOIA training for all personnel of the directorate by coordinating with the FOIA Coordinator.

g. Shoreside Activity. Implements a FOIA Program and designates an official FOIA Coordinator who will represent that activity in all FOIA matters. Helps COMSC (FOIA) develop public access policies for records under the shoreside activity's custody and control by acting as liaison with and giving assistance to the COMSC FOIA Coordinator.

h. Authorized Classification Authority. Reviews classified information and unclassified critical technology under his/her cognizance when documents are requested. Identifies all properly classified and unclassified critical technology portions of responsive documents, then certifies the security classifications are current. Submits declarations of such review.

i. Personnel. Process FOIA cases as instructed by the FOIA Coordinator.

j. Initial Denial Authorities (IDAs). IDAs are specifically delegated by reference (b). The following officials are authorized to grant or deny requests for copies of, or examination of records; grant denials of access to documents in whole, or in part; issue responses for other reasons; grant or deny requests for fee waivers and reductions of fees and grant formal extensions to time limits.

(1) Commander, Military Sealift Command

(2) Vice Commander, Military Sealift Command

(3) Deputy Commander, Military Sealift Command

(4) Chief of Naval Operations

(5) Director, Human Resources Office (HRO) Washington (as discussed in paragraph 8 below).

k. Release Authority. The following officials are authorized to furnish copies of requested documents, or make records available for examination when a proper FOIA request is presented and to make responses for other reasons as defined in reference (b).

(1) Commander, Military Sealift Command

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- (2) Vice Commander, Military Sealift Command
- (3) Deputy Commander, Military Sealift Command
- (4) Chief of Staff
- (5) Flag Secretary
- (6) Director, Legislative and Public Affairs
- (7) FOIA Coordinator
- (8) Commanders/Commanding Officers of Shoreside Activities

1. Extensions of Time Limits. Officials authorized to grant formal extensions of time for responding to command FOIA requests are Headquarters personnel who are specifically delegated by COMSC. This authority cannot be redelegated.

7. Action

a. Shoreside Activity

(1) Designate a FOIA Coordinator. Forward the code, title, name, telephone and facsimile numbers of its designee to COMSC (FOIA). Give immediate written notification of any changes to COMSC (FOIA). Give COMSC (FOIA) immediate written notification of any requests for documents which originated while performing joint exercises or operations under USTRANSCOM's authority.

(2) Issue an implementing instruction which identifies the FOIA Coordinator and release authorities. Give guidance on the marking, handling and safeguarding of documents marked FOR OFFICIAL USE ONLY (FOUO). Establish procedures for the disposition and processing of FOIA records under reference (b) and this instruction.

(3) Submit the activity's Annual FOIA Report to COMSC (FOIA). Ensure it is received no later than 5 January each year.

(4) Send COMSC (FOIA) a copy of any request which relates to nuclear weapons. The final response must be forwarded by COMSC (FOIA) to the Chief of Naval Operations.

(5) Contact the local Operations Security Officer before releasing technical or operational and readiness information. When there are operations with security indicators, he/she has responsibility for giving the supporting rationale for proposed withholding of information.

(6) Implement procedures to provide appropriate financial control over FOIA receipts. Payments collected for FOIA fees should be forwarded to the appropriate account designated in reference (b).

(7) Send a copy of each FOIA response letter to COMSC (FOIA).

(8) Negotiate an informal extension of time with requesters when release of the information is contemplated. When there is no agreement to a necessary extension of time, contact COMSC (FOIA) to obtain a formal extension of the tie limit and a command FOIA control number.

(9) Contact COMSC (FOIA) within 10 workdays of receiving a request when access to the information will be, or is expected to be, denied or partially denied. A FOIA control number will be assigned by COMSC (FOIA) and the formal extension of the time limit will be issued through COMSC (FOIA).

(10) Send the text for a proposed denial or partial denial recommendation to COMSC (FOIA). Use a 1-day mail service or facsimile machine to send the proposal within 5 days of receipt of the request where a formal extension of time has been granted, the proposed response should be forwarded as soon as possible by first class mail or priority mail. The envelope will clearly show the Headquarters FOIA control number assigned by COMSC (FOIA). As a minimum, include the following data in the proposed denial or partial denial recommendations:

(a) Explain the issues of the government or private industry purpose which will be jeopardized by releasing the requested data. Where an MSC legal counsel is on the premises, a legal memorandum should be sent.

(b) Attach DD Form 2086, or DD Form 2086-1, whichever is appropriate to identify the costs.

(c) Attach the original request and any other relevant correspondence from and to the requester.

(d) Include correspondence to and from any submitter of data which is requested (e.g., Executive Order 12600).

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(e) Attach two sets of copies of the records which respond to the request. Separate them into two packages. On one set, use a yellow highlighter to mark portions of the information which is proposed to be denied. Leave the other set unmarked.

(f) Include any other relevant references or background information.

b. Command Personnel

(1) Deliver requests which have been received to the FOIA Coordinator. They must be hand carried immediately. Requests will be given a FOIA control number and copies will be sent to the Mail Room control system. A copy will be sent to the appropriate office for action.

(2) Search for the records which are sought. Prepare a proposed text, or a complete response, whichever is appropriate.

(3) Perform security declassification review on classified information and obtain certification from the appropriate official having classification authority. Identify specific portions of the documents that may be released.

(4) Review requested information to identify unclassified technical data with military, or any other applications which contain critical technology as defined in Militarily Critical Technologies List (MCTL), or in any instruction for unclassified nuclear materials instruction.

(5) Review documents containing a limited distribution statement to verify accuracy of the marking and to determine which portions may be released, if any, or withheld under an appropriate FOIA exemption listed in reference (b). Revise distribution statements as necessary.

(6) Review documents marked FOR OFFICIAL USE ONLY (FOUO) to determine whether FOIA exemptions still apply to withhold a record or portions of it. See reference (b).

(7) Send two copies of the documents to the FOIA Coordinator. Provide written rationale to support a recommendation to withhold any information.

(8) Report time that was spent searching for records and the number of pages in one set of copies for each pricing amount on DD Form 2086 or 2086-1.

(9) Take FOIA training and keep current with changes.

c. Freedom of Information and Privacy Act Office, COMSC (FOIA)

- (1) Serve as principal point of contact on FOIA matters.
- (2) Assign a control number to each request. Direct the response to official FOIA requests received by COMSC Headquarters and MSC Central Technical Activity (MSCCENTACT).
- (3) Provide, or ensure, proper training for all personnel.
- (4) Direct preparation of FOIA response packages, and as necessary, coordinate preparation of FOIA declarations submitted to the court.
- (5) Review internal directives, practices and procedures, including those for forms and records, for conformity with this instruction.
- (6) Compile and submit the Command's Annual FOIA Report to CNO.
- (7) Review activity's conformance with the marking, handling, transporting and safeguarding of FOUO information.
- (8) Issue instructions and procedural guides for handling FOIA requests and the scope of the FOIA exemptions.
- (9) Review MSC addresses in the Department of the Navy Records and Locations for Public Inspection and provide CNO with updated information, as appropriate.
- (10) Conduct staff assistance visits within the MSC organization to ensure compliance with FOIA.
- (11) Provide CNO with a command-wide list of all FOIA Coordinators, by name, activity name and address, office code and current commercial and DSN telephone and facsimile numbers.
- (12) Review documents and FOIA responses for content and to determine if portions should be redacted under FOIA exemptions.
- (13) Prepare memoranda regarding merits of time extensions, release or denial of documents, absence of documents or fee waiver and fee reduction issues for submission to IDA.

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- (14) Issue responses for release and informal time extensions to FOIA requests.
- (15) Review proposed denials of FOIA requests prior to submission to COMSC (N00).
- (16) Initially receive all FOIA payments for search, review and duplication fees paid to the COMSC Headquarters.
- (17) Maintain official COMSC Headquarters and MSCCENTACT files for the administration of FOIA and FOIA case files processed at Headquarters and MSCCENTACT.
- (18) Maintain liaison with FOIA Coordinators within DOD and external agencies, and with Department of Justice Office of Information and Privacy.
- (19) Develop a command policy for FOIA matters and guide the process of FOIA requests, including scope of FOIA exemptions.
- (20) Coordinate submission of declarations to the courts regarding processing of FOIA requests.
- (21) Follow proposed legislation and court decisions.

d. Shoreside FOIA Coordinator

- (1) Represent the activity in matters regarding FOIA and act as the liaison with COMSC (FOIA).
- (2) Coordinate the preparation of FOIA responses within the activity and ensure a consolidated response is properly documented.
- (3) Coordinate the preparation of declarations to be submitted to the court, as required.
- (4) Represent the activity in oral communications with FOIA requesters to clarify what records were requested, confirm payment of applicable fees and identify confidential or commercial information, as necessary, after coordination with COMSC (FOIA).
- (5) Initially receive all payments for search, review and duplication fees paid to the activity.

(6) Give COMSC (FOIA) all changes to the command-wide FOIA Coordinator List.

(7) Compile and submit the activity's annual FOIA report to COMSC (FOIA) by 5 January each year.

e. Office of Counsel (N2)

(1) When deemed necessary by COMSC (FOIA), review proposed denials of FOIA requests.

(2) By 5 January of each year, provide cost information regarding personnel assigned FOIA duties.

f. Mailroom

(1) Route and delivery all FOIA requests to the FOIA Coordinator on the date of receipt.

(2) Send all FOIA correspondence by first class or priority mail.

(3) Provide special mailing as deemed by FOIA Coordinator.

g. Security Officer (N15). Review proposed disclosures related to technical and operational function of the command to identify Operations Security indicators, when requested by the FOIA Coordinator. Recommend protection of subject matter, as appropriate.

h. Comptroller (N8)

(1) Designate a point of contact to receive FOIA payments from the FOIA Coordinator. Date and initial each payment receipt and return a copy to the FOIA Coordinator.

(2) Send search, review and duplication fees received from the FOIA Coordinator for deposit in the appropriate account as specified in reference (b).

(3) Maintain a log of all FOIA payments received and provide copies for audit and other purposes when requested by the FOIA Coordinator.

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(4) Provide action and processing for delinquent FOIA payments, as appropriate, and provide copies to COMSC (FOIA).

(5) Provide the FOIA Coordinator with a list of requests and payments for fixed price documents for audit purposes and Annual FOIA Report.

i. Computer Support (N6)

(1) Designate a knowledgeable contact person who will become thoroughly familiar with the office needs, upgrade equipment and programs, and ensure prompt remedy for hardware and software problems.

(2) Provide the annual costs of the FOIA office. This includes computer use, telephone, Westmate contract and related items to the FOIA Coordinator by 5 January of each year.

8. Civilian Personnel Records

a. The Director, Human Resources Office (HRO) Washington is authorized to release, deny or partially deny requests for records in the custody of HRO upon receiving appropriate written concurrence from the FOIA Coordinator in the command having primary interest in the requested records. Send a copy of the response to the FOIA Coordinator of the appropriate command. Further delegation of initial denial authority is not authorized. In the absence of concurrence, the Director or his designee shall forward a proposed response to the appropriate FOIA Coordinator according to the procedures detailed in the above section.

b. Field activity offices with personnel records do not have denial authority and must send recommendations for denial through COMSC (FOIA) to COMSC (N00).

9. Schedule For Disposal of FOIA Files. Retain files as directed by reference (b).

10. For Official Use Only (FOUO) Guidelines. This term is to be used to mark and identify unclassified and nontechnical information that may be withheld from the public under FOIA exemptions (b)(2) through (b)(9). The FOIA Coordinator has final review of all proposed FOUO application. See reference (b) for further information.

11. Sanctions. Employees who act arbitrarily or capriciously to withhold information may be subject to disciplinary action. (Reference (a).)

12. Preparation of a Vaughn Index. A Vaughn Index is a procedural requirement and created only when it is requested during litigation. It is based on records in the official FOIA file and prepared through the direction of the FOIA Coordinator. In the event a Vaughn Index must be prepared, it is extremely important that the command have accurate records in the FOIA file because stringent and sometimes insufficient time limits for preparation may be given by the courts. A copy of all documents provided for the FOIA request must accompany the Vaughn Index and any excised material must be highlighted to show clearly through the marking.

13. Forms. DD Form 2086 and DD Form 2086-1 are available from COMSC, Director, Records Management Division (N0021).

14. Reports. The consolidated FOIA Report is assigned Report Control Symbol DD-PA(A)1365(5720) and is effective for 3 years from the date of reference (b).

Distribution:

COMSCINST 5000.19

List I (Case A, B)

SNDL 41B (MSC Area Commanders)  
41C (MSC Subarea Commanders)  
41D3 (MSC Offices)  
41F (MSCCENTACT)

HRO-W